



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 30, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80- 268

Honorable Charles F. Laird
Representative, Fifty-Ninth District
3501 Shawnee Court
Topeka, Kansas 66605

Re: Schools--Boards of Education--Expenditure of Public Funds

Synopsis: In the absence of a contractual agreement making alcohol counseling services a part of the consideration given a school district's professional employees for their services, a board of education may not expend funds of the district to provide such services. Cited herein: K.S.A. 72-5413.

* * *

Dear Representative Laird:

You request our opinion on a question concerning the power of a board of education to expend public funds to provide alcohol counseling services to employees of the school district. Specifically, it appears that Unified School District No. 501 (Topeka) is considering entering into a contract with the National Council on Alcoholism--Employee Assistance Program, to provide counseling services to employees of the school district, in consideration of a cash payment by the district to the National Council. You ask if the board of education is empowered by law to enter into such a contract and thereby obligate the district to make the cash payment provided in the contract.

A fundamental principle of law is that Kansas boards of education, unlike counties and cities, enjoy no powers of "home rule," and

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possess only those powers which are conferred upon them by law, either expressly or by necessary implication. Wichita Public Schools Employees Union v. Smith, 194 Kan. 2, 3 (1964). In addition, the Court, in Joint Consolidated School District No. 2 v. Johnson, 163 Kan. 202 (1947), said:

"That a public officer entrusted with public funds has no right to give them away is a statement so obviously true and correct as to preclude the necessity for citation of many authorities. (See 43 Am.Jur. 112, §308.) Equally well established is the proposition that school funds can be expended by the district board only for purposes authorized by the statute either expressly or by necessary implication (47 Am.Jur. 363, §92). This court has so held as recently as Rose v. School District No. 94, 162 Kan. 720, 179 P.2d 181. We find nothing in our statute pertaining to schools which permits the payment of gifts or gratuities by school district boards. In fact, if funds of the district are so expended they are paid out for purposes other than that for which they were raised and their payment is unlawful. Under our decisions, well supported by other authorities, the drawing of money from the public treasury on a warrant based on an illegal and unauthorized allowance by a board of officials constitutes a breach of an official bond providing such officers shall faithfully perform their duties and renders their sureties liable for the amount so drawn (City of Anthony v. Corbin, 133 Kan. 337, 299 Pac. 603; Superior Grade School District No. 110 v. Rhodes, 147 Kan. 29, 75 P.2d 251; 43 Am.Jur. 193, §422)." (Emphasis added.) Id. at 208.

In Johnson, the school district board had passed a motion to give bonuses to teachers and other employees of the school district. A taxpayer brought suit to recover the money paid out pursuant to that action. While the issue in Johnson was merely whether the taxpayer had standing to maintain the action, and the Court did not determine the merits of the case, the above-quoted rules nonetheless express fundamental principles relevant to your inquiry.

Our research discloses no express provision of law which would authorize the Board of Education of Unified School District No. 501 to enter into the contract under consideration herein. Thus, if the Board has such authority, it must be conferred upon the Board by necessary implication.

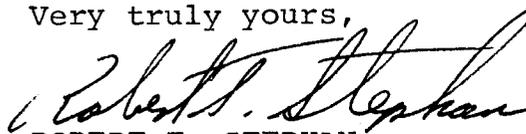
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In our judgment, the only statutory provisions from which it might be implied that a board of education could enter into a contract such as the one involved herein are those contained in the Teachers' Collective Negotiations Act, K.S.A. 72-5413 et seq. K.S.A. 72-5413 provides that the phrase "terms and conditions of professional service," as used in that act, means, inter alia, "such . . . matters as the parties mutually agree upon as properly related to professional services." As a result, we believe it is appropriate to consider the matter of providing alcohol counseling services to professional employees as one of the "term and conditions of professional service," since it would have a rational relationship to the quality of services rendered by the professional employee. Accordingly, we view it as a proper subject for professional negotiation under the Teachers' Collective Negotiations Act. Thus within this context, it is our opinion that a board of education may commit itself, by contractual agreement, to provide such counseling services as part of the terms and conditions of professional service to be rendered by professional employees of the school district.

However, the authority of a board of education to commit itself to provide such counseling services as part of the consideration given professional employees in return for the services provided to the school district is an entirely distinct matter from the authority of a board of education to provide such services gratuitously. The authority of a board of education to make such a commitment is derived only from its express statutory authority (and duty) to negotiate with its professional employees. Thus, if a board of education is not acting pursuant to the Teachers' Collective Negotiations Act, it has no source of authority, express or implied, to execute a contract to provide alcohol counseling services.

Therefore, in response to your inquiry, it is our opinion that, absent a contractual agreement making alcohol counseling services a part of the consideration given professional employees of the school district for their services, a board of education may not expend funds of the district to provide such services.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General